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In re Application of
Theodore F. Dimitroff
Application No. 10/517,396
Filed: November 28, 2004
Attorney Docket Number: HAMPAUS-0001

**OFFICE OF PETITIONS
ON PETITION**

This is a decision on the renewed petition filed October 11, 2007 (October 8, 2007 certificate of mail date) under 37 CFR 1.181, to withdraw the holding of abandonment, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513 or in the alternative, under 37 CFR 1.137(b) to revive the application.

The petition under 37 CFR 1.181 is **DISMISSED**.
The petition under 37 CFR 1.137(b) is **GRANTED**.

This application became abandoned on January 13, 2007 after the applicant failed to file a timely response to the non-Final Office Action mailed October 12, 2006. Accordingly, the Notice of Abandonment was mailed May 29, 2007.

In a petition filed June 15, 2007, petitioner argued that the non-Final Office Action was not received as it was returned to the USPTO by the United States Postal Service but did not present any evidence that the address of record had been changed with the USPTO at the time the non-Final Office Action was mailed. Thus the holding of abandonment was not withdrawn and the petition was dismissed in a decision mailed August 6, 2007.

Comes now petitioner with the instant renewed petition under 37 CFR 1.181 renewing the argument that the abandonment should be withdrawn and that the holding in Delgar does not afford blame for non-receipt.

To the contrary, petitions under 37 CFR 1.181 to withdraw the holding of abandonment are granted when evidence is presented to show that the petitioner acted responsibly with respect to providing the USPTO with an up to date address. Without such evidence, as is the instant case where there does not appear to have been a change of address filed prior to the mailing of the non-Final Office Action and the forwarding order filed with the USPS expired, the showing of record is insufficient to warrant withdrawal of the holding of abandonment.

With respect to the petition to revive, the petition fee in the amount of \$1540.00 has been applied and all other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to Technology Center 3672 for appropriate action on the amendment filed October 7, 2007 with the instant petition.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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Office of Petitions